

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11322 of 2000

with

CIVIL APPLIICATION NO. 11008 OF 2000

AND

SPECIAL CIVIL APPLICATION NO. 11323 OF 2000

WITH

CIVIL APPLICATION NO. 11009 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SA ZALA

Versus

STATE OF GUJARAT

Appearance:

MR PARESH UPADHYAY for Petitioners

Ms. Manisha Lavkumar, AGP for Respondent No. 1

MR JR NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/12/2000

COMMON CAV JUDGEMENT

"THERE IS AN ESSENTIAL DISTINCTION BETWEEN THE COURT AND AN ADMINISTRATIVE TRIBUNAL. A JUDGE IS TRAINED TO LOOK AT THINGS OBJECTIVELY UNINFLUENCED BY CONSIDERATION OF POLICY OR EXPEDIENCY BUT AN EXECUTIVE OFFICER GENERALLY LOOKS AT THINGS FROM THE STAND POINT OF POLICY AND EXPEDIENCY. THE HABIT OF MIND OF AN EXECUTIVE OFFICER SO FORMED CANNOT BE EXPECTED TO CHANGE FROM FUNCTION TO FUNCTION OR FROM ACT TO ACT. SO IT IS ESSENTIAL THAT SOME RESTRICTIONS SHALL BE IMPOSED ON TRIBUNALS IN THE MATTER OF PASSING ORDERS AFFECTING THE RIGHTS OF THE PARTIES."

"IT WAS NOT "LAW OF NATURE" IN THE SENSE OF THE LAW OF JUNGLE, WHERE THE LION DEVOURS THE LAMB AND THE TIGER FEEDS UPON THE ANTELOPE BECAUSE THE LION IS HUNGRY AND THE TIGER IS FAMISHED BUT THE HIGHER LAW OF NATURE OR THE NATURAL LAW WHERE THE LION AND THE LAMB LIE DOWN TOGETHER AND THE TIGER FRISKS WITH THE ANTELOPE."

"WHAT IS A CIVIL CONSEQUENCES LET US ASK OURSELVES BY PASSING VERBAL BOOBY TRAPES ? CIVIL CONSEQUENCES UNDOUBTEDLY COVER INFRACTION AND NOT MERELY PROPERTY OR PERSONAL RIGHTS BUT OF CIVIL LIBERTIES MATERIAL DEPRIVATION AND NON PECUNIARY DAMAGES. IN ITS COMPREHENSIVE CONNOTATION, EVERYTHING THAT AFFECTS A CITIZEN IN HIS CIVIL LIFE INFLICTS A CIVIL CONSEQUENCES."

Learned advocate Mr. Paresh Upadhyay is appearing for the petitioners in these petitions. Learned Assistant Government Ms. Manisha Lavkumar is appearing for respondent No. 1 State. Learned advocate Mr. J.R. Nanavaty is appearing for respondent NO. 2.

Brief facts of special civil application No. 11322 of 2000 are as under:

The petitioners in this petition were initially appointed as Class IV Employees in the respondent

corporation. The petitioners were confirmed as Class IV employees in due course. The petitioners were possessing necessary educational qualifications of SSC and had also passed GCC Examination (for typing). Thus, the petitioners were possessing all the requisite qualifications for being considered for promotion from the cadre of Class IV to the post of lower division clerk cum typist. On 29th May, 1997, the petitioners were promoted to the post of lower division clerk cum typist as approved by the Board of Directors of the respondent Corporation. The petitioners were kept on probation for a period of one year. On 17.6.1998, their period of probation was extended by one year. On 29th September, 1999, all the petitioners were confirmed on the post of lower division clerk cum typist. Thereafter, the respondent corporation has passed the reversion orders of all the petitioners, on the ground that the Government has objected to the said promotion. Said orders of reversion of the petitioner have been passed by respondent NO.2 without giving any opportunity of hearing to the petitioners and in violation of the principles of natural justice and, therefore, the petitioners have challenged the reversion orders from the post of lower division clerk cum typist to their substantive post in class IV cadre.

In the present petition, there is also a challenge by way of draft amendment to set aside the communication of the Government dated 27th September, 2000 on which reliance was made and the reversion orders of the petitioners had been passed by the respondents. The government communication dated 27th September, 2000 is also under challenge on the ground that the Government has decided to cancel the promotion of the petitioners and directed respondent No. 2 to cancel such promotion orders of the petitioners without giving any opportunity of hearing to the petitioners.

Against the petition, the respondent No. 2 has filed affidavit in reply on 6th November, 2000 and has also annexed copy of the recruitment rules as well as letter dated 27th September, 2000 issued by the Government.

Respondent No.1 has also filed reply against the petition and the petitioners have also filed affidavit in rejoinder.

Aforesaid civil application in this petition has been filed by the petitioners with a prayer to take up the main matter for final hearing at the earliest or to

grant mandatory injunction against the impugned orders of reversion dated 24th October, 2000.

In the main petition, rule has been issued by this court on 8th November, 2000 and it was made returnable on 23rd November, 2000.

Brief facts of special civil application No. 11323 of 2000 are as under:

The petitioners were initially appointed on the post of Seeds Assistant in the respondent corporation and all the petitioners were confirmed as such in due course and were promoted as seeds supervisors in the respondent corporation in due course and were also promoted to the post of seeds supervisors. On 29th May, 1997, the Board of Directors of the respondent corporation has decided to give promotion to the petitioners on the post of seeds officer by giving relaxation in the eligibility criteria and accordingly, orders of promotion were issued by the authorities of the respondent corporation. The petitioners were initially appointed on the post of seeds officers by promotion on probation of one year. On 25th June, 1998, authorities of the respondent corporation decided to extend the period of probation of the petitioners by one more year. On 30th June, 1999, 13th August, 1999 and 2nd September, 1999, by these separate orders, each petitioners were confirmed on the post of seeds officer by the respondent Corporation. On 24th October, 2000, respondent corporation has issued reversion orders to all the petitioners on the ground that the Government has objected to such promotions. It is the contention of the petitioners that the said reversion orders were passed by respondent No. 2 without giving any opportunity to the petitioners and the said orders of reversion have been challenged in this petition. In the main petition, by way of draft amendment, the petitioners have also challenged the decision of the Government dated 16th May, 2000 communicated by letter dated 22nd May, 2000 on the ground that the Government has taken decision to cancel the promotion order and to revert the petitioners without giving any opportunity of hearing to the petitioners. Against the present petition, affidavit in reply has been filed by the respondent NO.2 alongwith which, respondent No. 2 has produced rules and resolutions prescribing qualification for the post of seeds officer and the order passed by the government dated 16th May, 2000 as communicated by letter dated 22nd May, 2000. Respondent No. 1 has filed affidavit in reply to this petition alongwith which it has also produced memorandum and

Articles of association of the respondent No. 2 corporation and has also placed on record certain circulars of the Government dated 18th April, 1978 and others are annexed with the affidavit in reply. The petitioners have filed rejoinder to the said reply submitted by the respondents.

In this petition, aforesaid civil application has been filed by the petitioners with a prayer to fix the early date of final hearing or to grant mandatory relief against the implementation and operation of the impugned orders of reversion dated 24th October, 2000. Alongwith the said civil application, copy of the orders of reversion has also been produced.

In this petition, this court issued rule on 8th November, 2000 by making it returnable on 23rd November, 2000. In both the present petitions, service of rule issued by this court has been waived by the respective advocate appearing for the respondents.

Since both the petitions challenge the orders of reversion and involve identical questions of law and facts to the one issue issue that the impugned orders of reversion after the confirmation of the petitioners have been passed by the respondent NO.2 without giving any opportunity of hearing to the petitioners and the directions have been issued by the State Government to the corporation to cancel the promotion orders issued in favour of the petitioners without giving any opportunity to the petitioners and, therefore, in view of such identical challenge, both the have been heard together and are being decided by this common judgment.

In special civil application no. 11322 of 2000, it is the stand of respondent No. 2 corporation that the respondent No. 2 corporation has framed rules for recruitment to the post of lower division clerk cum typist and the said rules were known as the LOWER DIVISION CLERK CUM TYPIST RECRUITMENT RULES 1993. Rule 2 of the said rules provide for promotion from the post of an employee of category "D" Class IV and that a candidate must have seven years' experience and he should have passed SSC Examination with 50% marks and also should possess speed of 30/40 w.p.m. as per examination conducted in the Gujarati/English Typewriting by an institute recognised by the Government. Respondent No.2 corporation by resolution no. 131/8 at the meeting no. 95 of 1997 dated 29th May, 1997, resolved to modify the rules and a notification was issued that a candidate should have passed SSC Board Examination only, meaning

thereby, ceiling of having 50 per cent of marks in SSC Examination has been deleted. In view of such rules based on the resolution dated 29th May, 1997, the petitioners were given promotion in accordance with the amended rules. It is also mentioned in the affidavit in reply that the finance department of the State of Gujarat has, by letter dated 3rd June, 1997, informed respondent NO.2 that the aforesaid amendment can be enforced only after the amendment is sanctioned by the Finance Department/Public Undertaking Bureau and that the necessary action may be taken accordingly. The Government of Gujarat in its Agriculture and Cooperation Department by letter dated 27th September, 2000 informed the respondent No. 2. that no previous sanction has been taken by the respondent No. 2 of the Government in respect of the amended rules and that without obtaining previous sanction, promotions have been given which is illegal and the respondent No. 2 was further informed that the amended rules made at 131st meeting are not sanctioned and that the promotions given in accordance with the said amended rules are void ab initio at the inception. It is also made clear in the reply that as per the rules of 1993, the petitioners were not qualified and eligible but because of the amended rules of 1997, the petitioners became eligible for being considered promotion to the post of lower division clerk cum typist. Therefore, according to the respondent corporation, if the amended rules have not been sanctioned by the State Government and if the same has been set aside, natural result thereof is to set aside the promotion orders of the petitioners and, there is no need to follow the prescribed procedure or to follow the principles of natural justice because their initial promotion itself is void ab initio. The respondent corporation has also passed the resolution in meeting no. 148 dated 30th September, 2000 in compliance with the Government's directions dated 27th September, 2000 wherein the decision has been taken by the respondent corporation to revert six employees who were promoted on the post of lower division clerk cum typist.

The respondent No.1 State of Gujarat has also filed affidavit in reply and has submitted that as per the economy measures, prior approval of the Government is necessary for promotion and the petitioners were promoted by the corporation by order dated 29th May, 1997 without prior approval of the finance department and the amended rules have not been approved by the State Government as prior approval is not sought for by the corporation and, therefore, the promotions of the petitioners are illegal.

Respondent No.1 has relied upon clause 125 of the Articles of Association of the respondent NO.2 corporation to show that the State Government has powers to give directions and instructions to the Board of Directors. It is necessary for the corporation to get the approval of the Finance Department for revising the recruitment rules as well as promotion as per economy measures. It is also mentioned by respondent No. 1 that the petitioners are not entitled to promotion as per the recruitment rules prevalent at the relevant time. It is submitted that the matters relating to service for employee is to be approved by the State Government/Finance Department and no approval of the amended rules was obtained by the respondent No. 2 corporation and, therefore, the State Government has rightly directed to the respondent No. 2 by letter dated 27th September, 2000. It is also submitted that on earlier two occasions, the State Government has directed by letter dated 3rd June, 1997 and 13th June, 1997 and various instructions were issued by the State Government but the same has not been followed by the respondent No. 2 and, therefore, initial appointments having been made contrary to the statutory rules, continuation of such appointments must be held to be totally unauthorised and no right would accrue to them on that score and, therefore, according to the first respondent, the decision has rightly been taken by the respondent No. 1 and rightly directed considering clause 125 of the Memorandum of Articles of Association passed by the respondent No. 1 against the petitioners and, therefore, there is no any need to follow the principles of natural justice.

Against the two replies one filed by the respondent No.1 State and the another filed by the corporation, the petitioners have filed affidavit in rejoinder wherein it has been submitted that the respondent Government has not pointed out as pursuant to which provisions of rule, it was necessary or obligatory on the part of the respondent corporation to seek prior approval of the Government for amending the rules or for giving promotion or for taking any other decision which is administrative in nature. It is also denied that the respondent No. 2 corporation is the loss making unit and, therefore, question of applicability of economy measures has not been applicable to the case of respondent No. 2. It is also submitted that even the original rules of 1993 or the subsequent amendment prior to 1997, nothing was approved by the Government and, therefore, merely for want of approval of the Government, effect of the impugned rules have not been given is

without any basis and without any authority of law. The petitioners have also pointed out that giving of relaxation in the recruitment rules is the prerogative of the competent authority of the respondent corporation and even the Government itself has recently exercised such discretion in favour of its own officers who are similarly situated to the petitioners. Copy of such order dated 26th July, 2000 has been placed on the record in respect of one employee namely MOhanbhai Naranbhai Vaghani wherein relaxation has been given in educational qualification has been given and such an employee has been promoted to Class II post.

In respect of special civil application no. 11323 of 2000, facts remain same as relating to the earlier petition. Here also, answer of the respondent NO.2 is that the petitioners are not entitled to the promotion as per the recruitment rules, 1993 to the post of seeds officer and the said rules were amended as per resolution no. 131/9 in the meeting dated 9th May, 1997 and as a result of such amended rules, since the said rules were not sanctioned by the Government and ultimately the Government has taken decision on 16th May, 2000 that the petitioners are not qualified to the post of seeds officers as per the original recruitment rules, 1993 and, therefore, it was directed to the respondent No. 2 to cancel the promotion orders and to pass reversion orders against the petitioners. Same reply has been given by the first respondent excepting the dates and number of meetings. The only stand of the first respondent is that under clause 125, the State Government and the Finance Department has power to issue directions to the Director in regard to the conduct, affairs and business of the corporation and earlier also on two earlier occasions, vide letters dated 3.6.1997 and 13.6.1997, it was informed to the respondent corporation but same has not been seriously considered by the respondent corporation and ultimately the government has directed the respondent corporation to cancel such promotion orders and not approved the amended rules of 1997. Same rejoinder has been filed by the petitioners against this reply.

I have heard the learned advocates for the parties. Mr. Upadhyay, learned advocate appearing for the petitioners has submitted that the impugned orders of reversion in both the cases have been passed by the respondent corporation in compliance of the directions issued by the respondent NO. 1 without giving any opportunity of hearing to the petitioners and, therefore, the impugned orders of reversion in both the cases are

against the principles of natural justice and are, therefore, required to be quashed and set aside. Reliance has been placed upon the decision of the apex court in case of Gajanan L. Parnekar versus State of Goa and others reported in 2000 SCC LIS 57. As against that, learned advocate Mr. Nanavaty for respondent No. 2 corporation has relied upon three decisions of the apex court which are as under:

- (1) Dr. Suresh Chandra Verma versus CHancellor Nagpur University, AIR 1990 SC 2023.
- (2) MC Mehta versus Union of India 1999 (6) SCC page 237: 1999 AIR SCW 2754.
- (3) Aligarh Muslim University and others versus Mansoor Ali Khan 2000 (7) SCC 529.

It is the submission of Mr. Nanavaty, learned advocate appearing for the respondent NO.2 corporation in both the petitions that the question of giving opportunity is required to be examined in light of the facts and circumstances of each incident. In the instant case, Mr. Nanavaty has submitted that the promotion in both the petitions are based on the amended rules and one fact has not been disputed that in both the cases, as per the prevailing rules of 1993, none of the petitioners were qualified for being promoted and, therefore, only because of the impugned rules of 1997, promotions were given by the respondents. Since said rules have not been approved by the Government and no prior permission or approval has been obtained, the Government has not approved the amended rules of 1997 and as a result thereof, it was directed to the respondent corporation to cancel such promotions and, therefore, ultimately opportunity of hearing, if given to the petitioners, will not make any difference and after giving opportunity to the petitioners also, the result will be the one and the same. Therefore, in such circumstances, when technical breach, if it is rectified and followed, ultimately result will be the same and the apex court has held that there is no need to give any opportunity in such circumstances and therefore, Mr. Nanavaty has submitted that in the facts of the present case, when the impugned rules of 1997 has not been approved by the Government and promotions of the petitioners are based on such amended rules, naturally, result is that of reversion and, therefore, the present petitions are required to be dismissed.

Learned advocate Ms. Manisha Lavkumar has also relied upon the same authorities which were cited Mr. Nanavaty. She has submitted that the State Government

has power and control upon the respondent corporation as per clause 125 of the memorandum of Articles of Association and if no permission has been obtained before issuing promotion orders on the basis of the amended rules of 1997, then, the Government is entitled and empowered to direct the respondent corporation to cancel such promotion orders and, therefore, the action of the Government is within the power and competence and, therefore, these petitions are required to be dismissed with costs. She has further submitted that in the facts and circumstances of the case, there is no necessity to comply with the principles of natural justice.

I have considered the submissions made by the learned advocates for the respective parties. I have also considered the decisions cited by Mr. Nanavaty for respondent NO.2 and Mr. Upadhyay for the petitioners.

In para 9 of the decision reported in AIR 1990 SC 2023, the apex court has observed that when the services of the appellants are to be terminated in view of the change in the position of law and not on account of demerits or misdemeanor of an individual candidates, it is not necessary to hear individuals before their services are terminated. Audi Alterum Partem will not apply in such cases and, therefore, there is no breach of the principles of natural justice.

In para 19 and 22 of the decision reported in 1999 SCC 237, the apex court has observed that it is, therefore, clear that if on the admitted or undisputable factual position only one conclusion is possible and permissible, the Court need not issue a writ merely because there is a violation of the principles of natural justice. The reason is given by the apex court that the court may not issue its writs to compel observance of the principles of natural justice because it is not necessary to observe it but because the Courts do not issue futile writs. In case reported in 2000 (7) SCC 529, relied upon by Mr. Nanavaty for the respondent corporation, the apex court has considered the earlier decision in case of Mr. MC Mehta (supra) and has also considered other earlier decisions. In this case, the apex court has considered the useless formality/theory and considering the case of SL Kapoor versus Jag Mohan 1980 (4) SCC 379, observed that it will be sufficient for the purpose of case of Mr. Mansoorali to show that his case would fall within the exceptions stated by Chinappa Reddy, J. in case of SL Kapoor versus Jagmohan, 1980 (4) SCC 379.

I have considered three decisions cited at the

Bar by Mr.Nanavaty and emphasized on the facts of this case that because of the promotion orders were issued in favour of the petitioners on the basis of the amended rules, 1997 which rules have not been approved by the Government and the directions have been issued by the State Government and as a result thereof, reversion orders were passed by the corporation and, therefore, in view of such undisputed facts, according to Mr. Nanavaty, if any show cause notice is given to the petitioners, one answer or explanation will ultimately come to the same result and, therefore, there is no need to follow the principles of natural justice. There must be some real prejudice to the complainant. There is no such thing but there is mere technical breach and infringement of the principles of natural justice. Requirement of natural justice must rest on the facts and circumstances of each case. In case of State Bank of Patiyala versus SK Sharma, reported in 1996 (3) SCC 364, principles of prejudice has further been further elaborated and said principles has again been reiterated in case of Rajendra Sinh versus State of MP, 1996 (5) SCC 460.

The right to life includes the right to livelihood. The Sweep of the right of life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by imposition and execution of the death sentence, except according to the procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. The view taken by Apex Court in case of Olga Tellies Vs. Bombay Municipal Corporation reported in

A.I.R.1986 180 in respect of the procedure prescribed by law for the deprivation of right conferred by Article 21 must be fair, just and reasonable. The relevant observations made by the Apex Court in para 39, 40 and 41 are as under :-

"It is far too well settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Art 21 must be fair, just and reasonable. (See E.P. Royanppa Vs State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974) 2 SCR 621 : (AIR 1978 SC 597) ; M.H. Hoskot V. State of Maharashtra, (1979) 1 SCR 1 SCR 192 : (AIR 1978 SC 1548); Sunil Batra V. Delhi Administration, (1979) 1 SCR 392 : (AIR 1978 SC 1675); Sita Ram v. State of U.P. (1979) 2 SCR 1085 : (AIR 1979 SC 745); Hussainara Khatoon I. V. Home Secretary, State of Bihar, Patna (1980) 1 SCC 81 : (AIR 1979 SC 1360); Sunil Batra II v. Delhi Administration (1980) 2 SCR 557 : (AIR 1980 SC 1579); Jolly George Verghese Vs. Bank of Cochin, (1980) 2 SCR 913, 921-922 : (AIR) 1980 SC 470 at p. 475); Kasturi Lal Lakshmi Raeddy vs. State of Jammu & Kashmir, (1980) 3 SCR 1338, 1356 : (AIR 1980 SC 1992 at p. 2000); and Francis Coirallie Mullin vs. Administrator, Union Territory of Delhi(1981), 2 SCR 516, 523-524 : (AIR 1981 SC 746 at p .750)."

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay, Procedure which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has therefore, to be tested by the application of two standards : If any action must be within the scope of authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The

substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that 'The Influence of Remedies on Rights' (Current Legal Problems, 1953, Volume 6), "from the point of view of the ordinary citizen, it the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword" Per Frankfurter J. in Vitarelli V. Seaton, (1959) 3 Law ED 2nd 102".

41. Justice K.K.Mathew points out in his article on "The Welfare State, Rule of Law and Natural Justice", which is to be found in his book 'Democracy, Equality and Freedom'. that there is "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J. speaking for the Court, observed in Ramana Dayaram Shetty V. International Airport Authority of India, (1979) 3 SCR 1014, 1032 : (AIR 1979 SC 1628 at p.1636), that it is "unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirements."

Similarly, the Apex Court has also considered in case of [M/s TRAVNCORE RAYON LTD vs UNION OF INDIA 1971 Supreme Court 862 wherein, it is observed by the Apex Court that judicial power is exercised by the authority normally performing the executive or administrative function, the Apex Court insists upon disclosure of reasons in support of the order on two grounds one that party aggrieved in proceeding before the High Court or Supreme Court has an opportunity to demonstrate that the reasons which persuaded the authority to reject his case, were erroneous. The other that the obligation to record reasons operates as deterrent against the possible

betrayal action by the executive authority invested with judicial power. The habit of mind an executive officer so formed cannot be expected to change from function to function or from act to act so it is essence that some restrictions shall be imposed on tribunal in a matter of passing orders affecting the rights of the parties.

The question of principles of natural justice is required to be followed by the executive or administrative authority at the time of taking decision or determination any issue which may adversely affect the right of persons or it may have adversely civil consequences even in such circumstances, the principles of natural justice of giving reasonable effective opportunity to the persons has been considered by the Apex Court in case of SRIMATI MENKA GANDHI VS. UNION OF INDIA reported in AIR 1978 Supreme Court 597. The Apex Court has also considered in the said decision that if suppose rule or Section is silent about principles of natural justice even though, justice of common law will supply the omission of legislature. The following observations of the Apex Court are quoted as under :-

"32. It is well established that even where there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa Vs. Dr.(Miss) Binapani Dei (AIR 1967 SC 1269 at p. 1271) in the following words :

"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. it is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be

super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

33. In England, the rule was thus expressed by Byles J. in *Cooper V. Wandsworth Board of Works* : (1863) 14 CB (NS) 180 :

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam (says God), "where art thou ? Has thou not eaten of the tree whereof I commanded thee that thou shouldest not eat." And the same question was put to Eve also."

37. It appears to me that even executive authorities when taking administrative action which involves any deprivations of or restrictions on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness or unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

Recently, in case of *Gajanan L. Parnekar versus State of Goa* and another reported in 2000 SCC Lab. & Service, page 57, the apex court has observed that the manner in which the order dated 22nd January, 1999 came to be passed was improper. The appellant was denied of the benefits of the order dated 16th February, 1994 unheard. There has been breach of the principles of natural justice and violation of fair play in action. The order made in the appellant's favour as early as on 16th February, 1994 was rescinded without giving any opportunity to him to show cause against it. The principles of natural justice have been respected in their breach. The facts of the present case and the facts of the case before the apex court are almost

similar. In case before the apex court, the appellant was working as a confirmed head master of the private high school. The school was taken over by the Government and thereafter the appellant therein was appointed as a head master of the Government Middle School vide order dated 13.6.1974. The appellant represented against his appointment as a head master of the middle school and ultimately vide order dated 16th February, 1994, he was absorbed retrospectively as a head master of the Government High School from 1st April, 1974. Said order dated 16th February, 1994 has been recalled by the respondents without giving any opportunity to the appellant and therefore, the apex court observed that before recalling the order of absorption of the appellant dated 16th February, 1994, principles of natural justice must be observed.

In case of Yogesh CHandra Joshi versus State of UP reported in AIR 1998 SC 3239, the appellant was appointed to the post of finance officer which was created under the unamended rules without obtaining prior approval of the State Government and by the time, he was duly promoted, the amended rules came into force. It was held by the apex court that he cannot be reverted to his substantive post on the ground that his appointment was bad as prior approval of the State Government had not been obtained and it was held by the apex court that the amended provisions do not contain anything which would require the prior approval of the Government for appointment to the post created in the Jal Sansthan.

It is also equally required to be noted that while passing the two resolutions by the respondent corporation, giving relaxation for the higher post in both the cases the service rules were accordingly amended by the Board of Directors in the meeting and in the amended rules or resolution which has been passed by the Board of Directors, there is nothing mentioned that before implementing the said resolution or before implementing the rules as amended in 1997, prior approval of the State Government is necessary. Meaning thereby, the Board of Directors was sure that under the Memorandum and Articles of Association, the Board of Directors have power to frame the service rules or to amend the same and it is in competence to amend the rules and to grant the promotions, otherwise, at the time of amending the rules, the natural course would be to provide rider that it will be implemented subject to the approval of the Government. Not only that, while amending the rules in the year 1997 and while promoting the petitioners to higher post and also while confirming their period of probation, no such

mention has been made by the respondent corporation and therefore also, now, the promotions of the petitioners in both the petitions cannot be cancelled and the petitioners cannot be reverted to their original post on the said ground.

In this case, all the petitioners were appointed and promoted to the higher post on probation and after satisfactory completion of the two years' period of probation, all the petitioners were confirmed on the promoted posts and such order of promotion has been recalled by the respondent corporation on the ground that there is direction of the first respondent State Government not to approve the amended rules of 1997 and the State Government has directed the respondent No. 2 to cancel such promotion orders of the petitioners and therefore, when right has been created in favour of the petitioners in pursuance of the action of the respondent corporation, then, all of a sudden, after the period of three years from the date of promotion, if the respondent corporation wants to rely upon the direction and to recall the order of promotion, then, it is incumbent upon the respondent corporation to at least give reasonable opportunity to the petitioner so that they can point out to the respondent corporation that the directions which have been issued by the State Government is not binding to the respondent corporation considering the memorandum of Articles of Association or they may also point out on the material and to defend their case and for that a fair play is required to be observed. Merely because the Government has issued the directions to cancel the promotion orders as prior approval of the Government has not been obtained, it cannot be presumed that the petitioners have no locus standi or have no any legal right to remain continue in the post of promotion and such presumption is too much to the effect that it considered undisputed facts. In this case, the petitioner has not admitted any facts and there are no undisputed facts between the parties. The decisions of the apex court cited by Mr. Nanavaty are based on particular and peculiar facts. Ultimately the Court has to take care wherever the court is justifying denial of natural justice that its decision is not described as preconceived view or one in substitution of the view of the authority. Therefore, in the facts of the present case, there is no admitted or undisputed facts as suggested by Mr. Nanavaty between the parties and, therefore, three decisions cited, considering the facts and circumstances of the present case, are not applicable to the present case on facts.

The contention raised by Mr. Nanavaty as well as Ms. Manisha Lavkumar, learned AGP appearing for the respondent State Government is that under clause 125 of the Memorandum and Articles of Association, the State Government is empowered to issue directions to the respondent No.2. Said clause 125 of the Articles of Association reads as under:

"Notwithstanding, anything contained in any of these articles, the State Government may from time to time issue such direction or instructions, not inconsistent with the provisions of Companies Act, 1956 or any other law in force or the rules made thereunder, in matter involving national security or substantial public interest or no any substantial point of policy in regard to the conduct of the affairs and the business of the Company, and in like manner may vary and anal any such directions or instructions. The Directors shall give immediate effect to directions or instructions so issued."

Thus, as per clause 125 of the Memorandum and Articles of Association, in the matters involving national security, or substantial public interest or any substantial public interest or any substantial point of policy in regard to the conduct and affairs of the company and in like manner, the State Government may vary and annul such directions or instructions but according to my view, upon bare reading of clause 125, the State Government is having no power to issue any direction or instructions in respect of the service matter of an employees working under the respondent corporation. As per my opinion, clause 125 is not meant for which would require approval of the State Government for amending the rules wherein promotions were given to the petitioners. Said clause is applicable only to five contingencies namely (i) national security; (ii) substantial public interest; (iii) any substantial point of policy; (iv) in regard to the conduct or the affairs and business of the company and in like manner may vary and annul any such directions or instructions and in that service matters of an employees of the corporation is not covered and, therefore, as per my view, the Government is not empowered to issue any direction or instructions to the respondent corporation in respect of the service matters or in relation to the service rules of the employees. As against that, there is specific powers enjoyed by the Board of Directors of respondent NO.2 Corporation which start from clause 62 and relevant is clause 94 which relates to the powers of the Directors. Clause 101

provides that without prejudice to the power conferred by this Article and so as not in any way to limit or restrict these powers and without prejudice to the powers conferred by these Articles but subject to the restrictions contained therein the directors shall have powers as contained therein. Sub clause (v) of clause 101 reads as under:

"(v) To appoint, and at their discretion remove or suspend such general managers, secretaries, assistants, supervisors, scientists technicians, engineers, consultants, legal, medical or economic advisers, research workers, laborers, clerks agents and servants, for permanent, temporary or special services as they may from time to time think fit and to determine their power and duties and fix their salaries, or emoluments or remuneration, and to require security in such instances and to such amounts as they may think fit, and also from time to time provide for the management and transaction of affairs of the company in any specific locality in India or elsewhere in such manner as they may think fit."

Sub clause (za) of clause 101 reads as under:

"[z(a)] From time to time, make vary and repeal bye laws for the regulation of the business of the Company, its officers, employees and other servants."

Thus, as per sub clause (v) and [z(a)] of clause 101, it is clear that the board of directors have power to appoint any employee and to promote any employee and to fix any salary or remuneration for such an employee and the board of directors have powers from time to time to make, vary and repeal bye laws for the regulation of the business of the company, its officers, employees, and other servants. Therefore, considering these two sub clauses of clause 101, when the rules were amended in the year 1997 and on that basis the promotions were issued in favour of the petitioners and ultimately all the petitioners are confirmed after satisfactory completion of the period of their probational, now they cannot be reverted to the lower post after confirmation of probation period only on the ground that the rules as amended in the year 1997 have not been approved by the State Government. Mr. Upadhyay has submitted that even 1993 Rules have also not been approved by the State Government. As against this submission made by Mr.

Upadhyay, Mr. Nanavaty has not been able to make any submission to say as to whether the 1993 Rules have been approved or not by the State Government. Mr. Nanavaty is also not able to satisfy that the approval of the Government is required under which clause of the Memorandum and Articles of Association for amending rules of 1997. Therefore, there is no provision in the Articles of Association which would require prior approval or any approval of the State Government and direction which was issued by the Government as contended by the respondents under clause 125 is also not applicable as none of any contingency mentioned in the said clause is satisfied. Therefore, under clause 125, the State Government is having no power to issue any direction or instruction against the respondent corporation in respect of the service rules and service matters regulating the employees. To such contention raised by Mr. Upadhyay, there is no reply either from the State Government or from the corporation as to whether 1993 Rules have been approved by the State Government or not on the basis of which, the petitioners are not qualified and eligible for such promotions. IN light of these facts, as per my view, in view of sub clause (v) and [z(a)] of clause 101, reliance placed upon clause 125 is misconceived and is not applicable. It is pertinent to note that when the Government has passed the order in both the matters one dated 27th September, 2000 and the another dated 16th May, 2000, in none of the letters, the Government has specified particular clause of having the powers to direct or instruct the respondent corporation not to approve the amended rules of 1997 under the relevant provisions of the Memorandum and Articles of Association. In both the letters, the Government has not pointed out any relevant clause of the Memorandum and Articles of Association under the directions have been issued by the Government and, therefore, considering the reply of the State Government, they relied upon clause 125 and according to my opinion, after considering in detail this clause 125, said clause is not applicable to the facts of the present case and the state government has no power to issue any directions to the respondent corporation in respect of the service rules which have been amended by the Board of Directors in the year 1997 and the State Government has also no power to issue any direction to the respondent corporation to cancel the promotions order or to revert the petitioners. Such powers are not vested in the State Government. The respondent corporation as well as the State Government has not been able to point out any other relevant clause under which such powers were received to cancel the promotion and to direct the reversion of the petitioners herein. On the contrary,

considering the relevant clause of the Memorandum and Articles of Association, sub clause (v) and [z(a)] of clause 101 in particular, these are the powers vested with the Board of Directors and the Board of Directors have rightly amended the rules in the year 1997 and have rightly granted promotions to the petitioners and rightly confirmed the petitioners after satisfactory completion of the period of their probation and in view of this, order of reversion passed by the respondent corporation on the basis of the direction in one case dated 27.9.2000 and in another case dated 16th May, 2000 is totally illegal, capricious and arbitrary orders passed by the respondent corporation violating the basic principles of natural justice and, therefore, the order of reversion passed in both the cases against the petitioners dated 24th October, 2000 in both the cases are hereby quashed and set aside. It is also necessary to quash and set aside the two letters and directions and instructions issued by the State Government to the respondent corporation dated 27th September, 2000 and 16th May, 2000 communicated by letter dated 22nd May, 2000 as both the orders are under challenge in both the petitions and therefore, both the orders are hereby quashed and set aside as illegal without jurisdiction and contrary to the principles of natural justice and it is declared that the Government has no power to issue direction or instructions under clause 125 to the respondent corporation to revert the petitioners and to cancel the orders of promotion and it is declared that the Government has no power to direct the respondent corporation to revert the petitioners and have also no power to issue any such directions to the corporation in respect of service rules which have been framed by the Board of Directors while exercising the powers under clause 101[v] and [z(a)] of the Memorandum and Articles of Association and, therefore, orders of the State Government are also not sustainable in law and therefore are quashed and set aside. Therefore, in result, order of reversion dated 24.10.2000 passed against the petitioners in both the petitions are hereby quashed and set aside and the directions issued by the State Government in letter dated 27.9.2000 and 16.5.2000 communicated by letter dated 22.5.2000 against the respondent corporation are hereby quashed and set aside. Both the petitions are fully allowed and the rule is made absolute in both the petitions with no orders as to costs. Both the civil application as aforesaid shall also stand disposed of with no order as to costs.

.12.2000. (H.K. Rathod, J.)

Vyas

After the judgment has been pronounced by this Court today in the open Court, learned advocate Mr. J.R. Nanavaty appearing for respondent No.2 Corporation has prayed for staying the implementation and operation of the judgment pronounced by this court today so as to enable the respondent No.2 to approach the higher forum. Such a prayer made by Mr. Nanavaty has been opposed by Mr. Paresh Upadhyay, learned advocate appearing for the petitioners in both the petitions. Such a prayer made by Mr. Nanavaty cannot be granted on the ground that the orders under challenge in both the petitions have been set aside and the respondents are having sufficient time to approach the higher forum. Hence, the prayer made by Mr. Nanavaty is rejected.

19.12.2000 (H.K. Rathod, J.)

Vyas